IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

WP(C).No. 32764 of 2007(A)

PETITIONERS:
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1. THEVAN,S/O.AYYAPPAN, AGED 85 YEARS
KATTITHARA NIKARTH VEEDU,EZHUPUNNA KARA
ERAMALLOOR PO, CHERTHALA TALUK, ALAPPUZHA DISTRICT

2. KUNJUPENNU,W/O.THEVAN,AGED 75 YEARS
KATTITHARA NIKARTH VEEDU,EZHUPUNNA KARA
ERAMALLOOR PO, CHERTHALA TALUK, ALAPPUZHA DISTRICT

BY ADV. SMT.R.SUDHA

RESPONDENTS:

K.NARAYANAN, KARAIMATHARA VEEDU,
VALAMANGALAM SOUTH P.O., THURAVOOR,
ALLEPPEY DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.32764 OF 2007

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Dated this the 5th day of November 2007

JUDGMENT

This writ petition is filed with a prayer to pass an order of injunction restraining the respondent, his men or agents from alienating 6 cents of land comprising in Sy.No.233/1A1 of Ezhupunna Village and also for a direction to the court below to pass an interim order of injunction in O.S.No.774 of 2007. I am afraid that this court cannot issue the directions prayed for in the writ petition.

2. Plaintiffs have filed a suit as O.S.No.774/2007 before the Munsiff's Court, Cherthala and along with the suit, I.A.No.3191 of 2007 was filed for injunction to restrain the defendant therein from alienating the property. That court did not pass an order of injunction, but only issued notice. Now against that, the present writ petition is filed.

3. When a civil court considers the matter and does not pass an order of injunction, it means that it is not prima facie satisfied to grant an order of temporary injunction without notice. The remedy for the party is to get the notice served as expeditiously as possible and request the court to pass a

considered order on the matter within 30 days as contemplated under the provisions of the Code of Civil Procedure. Further, if a transaction is effected after the institution of the suit, it will be hit by lis pendens and suppose the contention of the plaintiffs that the defendant is not having any right over the property, then also any transaction effected by the defendant will have no legal sanctity. These are all matters which require an in depth consideration by the court below and the parties cannot be allowed to surpass the provisions of law and come to this court under Article 227 of the Constitution of India just because they did not get an order which they seek before the court below. I decline jurisdiction and therefore the writ petition is dismissed. But, I observe that the learned Munsiff on immediately service of notice take into consideration the urgency of the matter, hear the matter on merits and dispose it of in accordance with law.

M.N.KRISHNAN, JUDGE

Cdp/-